

NEVADA DIVISION OF ENVIRONMENTAL PROTECTION  
*Draft Response to the Yerington Paiute Tribe's CERCLA Deferral Items – For Discussion*

ITEM 2 – ITEMS YPT INDICATES ARE CURRENTLY SUPPORTED BY EPA UNDER THE CERCLA PROCESS

ITEM	NATIONAL PRIORITIES LIST POTENTIALLY RELATED AUTHORITIES	NDEP EXPECTATION UNDER DEFERRAL
2.1 Financial Support for the Tribal Environmental Department	<ul style="list-style-type: none"> <li>CERCLA § 104(d) – Authorizes EPA to enter into a cooperative agreement with a Tribal government to carry out response actions if the Tribe is deemed capable of carrying out and enforcing such actions.</li> </ul>	<ul style="list-style-type: none"> <li>NDEP agrees that the Tribal Environmental Department is an important component to the Site cleanup effort.</li> <li>NDEP requests information related to the financial support the Tribe has received from EPA and the Tribe's expenditures for Site related activities.</li> <li>If the Tribe receives continued financial support for its Environmental Department after Site deferral, NDEP will request that the Tribe segregate and separately account for this funding and its expenditures from any other funding the Tribe receives for Site related activities.</li> <li>NDEP requires Tribal assistance in finding legal support for the requested funding.</li> </ul>
2.2 Financial Support for Community Education Through Tribal Education Department	<ul style="list-style-type: none"> <li>NCP §§ 300.430(c), 300.430(f)(3), 300.435(c) – Define community relations requirements for CERCLA response activities.</li> </ul>	<ul style="list-style-type: none"> <li>NDEP agrees that community education and involvement are vital to the success of Site response actions after deferral.</li> <li>The Deferral Agreement requires NDEP to implement a Community Involvement and Participation Plan for the Site.</li> <li>NDEP is open to considering Tribal community outreach as part of this plan, or, alternatively, sharing resources with the Tribe to educate Tribal community members about Site response actions.</li> <li>NDEP requires Tribal assistance in finding legal support for the requested funding.</li> </ul>

ITEM	NATIONAL PRIORITIES LIST POTENTIALLY RELATED AUTHORITIES	NDEP EXPECTATION UNDER DEFERRAL
2.3 Process for Tribal Review, Comment, Participation in and Approval of Work plans, Reports, and Other Site Decisional Documents	<ul style="list-style-type: none"> <li>• CERCLA § 126(a) – Provides that EPA and federal recognized Tribes have a government to government relationship.</li> <li>• CERCLA § 104(c)(2) – Requires EPA to consult with tribes on remedial actions.</li> <li>• CERCLA § 104(d) – Authorizes EPA to enter into a cooperative agreement with a Tribe to carry out response actions if the Tribe is deemed capable of carrying out such actions.</li> <li>• EPA Policy (1984) – Requires EPA to assure that Tribal interests are considered whenever EPA’s actions and/or decisions may affect reservation environments.</li> </ul>	<ul style="list-style-type: none"> <li>• NDEP considers Tribal consultation on decisional documents a key component to the success of Site deferral.</li> <li>• NDEP will follow EPA’s policy with respect to Tribal consultation on decisional documents.</li> <li>• NDEP requires Tribal assistance in finding legal support for granting the Tribe authority to approve decisional documents after Site deferral.</li> </ul>
2.4 Inclusion of Onsite Cultural Monitors	<ul style="list-style-type: none"> <li>• NHPA § 106 – Requires federal agencies to take into account the effect of their actions on any district, site, building, structure, or object that is included or is eligible to be included in the National Register of Historic Places.</li> <li>• 36 CFR §§ 800.3 – 800.13 – Outlines the process for consulting with Tribal Historic Preservation Offices and Tribes, identifying historic properties, determining whether and how such properties may be affected, and resolving adverse effects.</li> </ul>	<ul style="list-style-type: none"> <li>• NDEP acknowledges and understands that Tribal cultural resources must be protected and preserved if they are encountered during Site cleanup.</li> <li>• NDEP anticipates that issues related to protecting and preserving Tribal cultural resources will be evaluated in the remedial investigation and feasibility study.</li> <li>• NDEP will require a sufficient number of personnel, who work at the Site on a daily basis, receive cultural resource training through the Tribe.</li> </ul>
2.5 Preference for Local and Tribal Contractors Through State Bidding Process	<ul style="list-style-type: none"> <li>• CERCLA § 105(f) – Requires EPA to consider the availability of qualified minority firms in awarding contracts under CERCLA.</li> </ul>	<ul style="list-style-type: none"> <li>• NDEP is working with NDOT to adjust the State’s bidding practices to provide a preference for awarding contracts to qualified local and tribal contractors who bid on projects at the Site.</li> <li>• NDEP requires Tribal assistance in finding legal support for this bidding practice as it relates to Tribal contractors.</li> </ul>

### ITEM 3 – CONCERNS SHARED BY THE STATE AND THE TRIBE

ITEM	NATIONAL PRIORITIES LIST POTENTIALLY RELATED AUTHORITIES	NDEP EXPECTATION UNDER DEFERRAL
3.1 Settle all NRDA Claims	<ul style="list-style-type: none"> <li>• CERCLA § 104(b)(2) – Requires EPA to coordinate with the natural resource trustees on assessments, investigations, and planning.</li> <li>• CERCLA § 122(j)(1) – Requires EPA to notify natural resource trustees of negotiations with potentially responsible parties and encourage natural resource trustees to participate in such negotiations.</li> <li>• NCP § 615(c)(1)(i-iv) – Defines the actions natural resource trustees may take after notification or discovery of an injury, loss, or threat to natural resources under their trusteeship.</li> </ul>	<ul style="list-style-type: none"> <li>• NDEP will enter into an agreement with ARC which preserves NDEP's natural resource damage claims after deferral.</li> <li>• NDEP encourages its co-trustees, including the Tribe, to pursue similar agreements with ARC.</li> <li>• NDEP is under the impression that the natural resource trustees will continue to receive funding for natural resource damage assessment, investigation, and planning after Site deferral if the natural resources trustees provide sufficient assurance that their claims are properly preserved.</li> <li>• NDEP will comply with CERCLA and NCP requirements of trustee notification and coordination after Site deferral.</li> </ul>

### ITEM 4 – OTHER REGULATORY ISSUES

ITEM	NATIONAL PRIORITIES LIST POTENTIALLY RELATED AUTHORITIES	NDEP EXPECTATION UNDER DEFERRAL
4.1 Complete a Site Wide Comprehensive Storm Water Management Plan and Emergency Response Plan Prior to Deferral	<ul style="list-style-type: none"> <li>• NCP § 300.430 – Requires a remedial investigation, feasibility study, and remedy selection for operable units at the Site.</li> <li>• NCP § 300.430 – Requires remedial design and remedial action to be in conformance with the remedy selected and set forth in the ROD.</li> </ul>	<ul style="list-style-type: none"> <li>• NDEP anticipates that a Site wide comprehensive storm water management plan and Emergency Response Plan will be evaluated, if appropriate, as part of the CERCLA process and remedy selection.</li> </ul>
4.2 Use of CERCLA or UMTRA, Whichever Provides the Higher Level of Protection	<ul style="list-style-type: none"> <li>• The UMTRA and applicable regulations do not appear to apply to the Site because it was not mined for uranium.</li> </ul>	<ul style="list-style-type: none"> <li>• NDEP and EPA will enter into a Deferral Agreement which requires Site cleanup to be CERCLA protective.</li> </ul>

ITEM 5 – UNRESOLVED ISSUES THAT WOULD BE ADDRESSED DURING THE CERCLA PROCESS

ITEM	NATIONAL PRIORITIES LIST POTENTIALLY RELATED AUTHORITIES	NDEP EXPECTATION UNDER DEFERRAL
5.1 Payment of All Current and Future Expenses (Including Historical) for Water Treatment on the Reservation	<ul style="list-style-type: none"> <li>• CERCLA § 126(a) – Provides that EPA and federally recognized tribes have a government to government relationship.</li> <li>• CERCLA § 104(c)(2) – Requires EPA to consult with tribes on remedial actions.</li> <li>• CERCLA § 104(d) – Authorizes EPA to enter into a cooperative agreement with a tribe to carry out response actions if the tribe is deemed capable of carrying out such actions.</li> <li>• EPA Policy (1984) – Requires EPA to assure that tribal interests are considered whenever EPA’s actions and/or decisions may affect reservation environments.</li> <li>• NCP § 300.430 – Defines the requirements for remedial investigation, feasibility study, and remedy selection.</li> <li>• CERCLA § 104(b)(2) – Requires coordination with the natural resource trustees on assessments, investigations, and planning.</li> <li>• CERCLA § 122(j)(1) – Requires that natural resource trustees are notified of negotiations with potentially responsible parties and encouraged to participate in such negotiations.</li> <li>• NCP § 615(c)(1)(i-iv) – Defines the actions natural resource trustees may take after notification or discovery of an injury, loss, or threat to natural resources under their trusteeship.</li> </ul>	<ul style="list-style-type: none"> <li>• NDEP anticipates that the Tribe’s request for payment of current and future water treatment at the reservation will be resolved, if appropriate, through remedial investigation, a feasibility study, and remedy selection and implementation; or, alternatively, through natural resource damage assessment, investigation, planning, and recovery.</li> <li>• NDEP does not consider this issue as one that may be resolved prior to deferral.</li> </ul>

ITEM	NATIONAL PRIORITIES LIST POTENTIALLY RELATED AUTHORITIES	NDEP EXPECTATION UNDER DEFERRAL
5.2 Support Economic Development Plan as the Tribe Transitions to Less Water Intensive Industry	<ul style="list-style-type: none"> <li>• CERCLA § 104(k)(1)(G) – Tribes are eligible for Brownfields funding.</li> <li>• CERCLA § 101(39)(B) - Exclusions include a facility: (1) subject to a planned or ongoing CERCLA removal action, (2) listed or proposed for listing on the National Priorities List, (3) subject to a unilateral administrative order, court order, administrative order on consent, or consent decree under CERCLA.</li> <li>• CERCLA § 107(q)(1)(A) – Exempts from owner or operator liability persons that own land contaminated solely by a release from contiguous, or similarly situated property owned by someone else, if the person: (1) did not cause or contribute to the release or threatened release, (2) is not potentially liable or affiliated with any other person potentially liable, (3) exercises appropriate care in respect to the release, (4) provides full cooperation, assistance, and access to persons authorized to undertake the response action and natural resource restoration, (5) complies with all land use controls and does not impede the performance of any institutional controls, (6) complies with all information requests, (7) provides all the legally required notices regarding releases of hazardous substances, (8) conducted all appropriate inquiry at time of purchase and did not know or have reason to know of contamination.</li> </ul>	<ul style="list-style-type: none"> <li>• NDEP anticipates that the tribe will continue to be eligible for Brownfields funding through the EPA or the NDEP managed State Brownfields Program for areas of the reservation that are not being directly funded for assessment or cleanup under a deferral agreement scenario. Areas of the reservation that have either been directly or indirectly impacted by former activities from the Anaconda Mine site will most likely not be eligible for funding if private funding is supporting assessment and cleanup.</li> </ul>

ITEM	NATIONAL PRIORITIES LIST POTENTIALLY RELATED AUTHORITIES	NDEP EXPECTATION UNDER DEFERRAL
5.3 Address Use of Mine Waste as Construction Materials in YPT Community (fill under houses, road base, etc.)	<ul style="list-style-type: none"> <li>The EPA understands that this condition may exist on specific areas of the reservation, but does not have evidence pointing to an actual event when this may have occurred. This area of potential concern is not currently part of the ongoing remedial investigation under a CERCLA lead site.</li> </ul>	<ul style="list-style-type: none"> <li>NDEP anticipates the Tribe's request to address the use of mine waste as construction materials in the Tribal community is an issue that will be resolved, if appropriate, through remedial investigation, a feasibility study, and remedy selection and implementation; or, alternatively, through natural resource damage assessment, investigation, planning, and restoration or recovery.</li> <li>NDEP does not consider this issue as one that may be resolved prior to deferral.</li> </ul>
5.4 Tribal Approval of All Seed Mixes and Other Components of Revegetation Plans	<ul style="list-style-type: none"> <li>CERCLA § 126(a) – Provides that EPA and federally recognized tribes have a government to government relationship.</li> <li>CERCLA § 104(c)(2) – Requires EPA to consult with tribes on remedial actions.</li> <li>CERCLA § 104(d) – Authorizes EPA to enter into a cooperative agreement with a tribe to carry out response actions if the tribe is deemed capable of carrying out such actions.</li> <li>EPA Policy (1984) – Requires EPA to assure that tribal interests are considered whenever EPA's actions and/or decisions may affect reservation environments.</li> </ul>	<ul style="list-style-type: none"> <li>NDEP considers Tribal consultation on decisional documents a key component to the success of Site deferral.</li> <li>NDEP will follow EPA's policy with respect to Tribal consultation on decisional documents.</li> <li>NDEP requires Tribal assistance in finding legal support for its request to be granted authority to approve decisional documents after Site deferral.</li> </ul>